

## MEMORANDUM OF LAW

DATE: April 23, 1993

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Use of Different Name on Ballot

By memorandum dated April 6, 1993, you ask me whether a candidate who is registered to vote under the name of Darryl Smith may use his Muslim name, Atif Hakim, on the ballot in a race for a City Council seat.

You correctly state that San Diego Municipal Code ("SDMC") section 27.2103 seems to allow for such a practice, since the required nomination petition provides a separate space for candidates to list their name as they desire to have it on the ballot. A copy of SDMC section 27.2103 is attached. This San Diego Municipal Code section, however, does not resolve the issue.

Three California Elections Code sections potentially provide some guidance. Two of them deal with name changes of voters (Section 311.5 and 14213) and do not apply to the facts presented here. Elections Code section 10209 pertains to candidates who change their names and potentially applies to the facts presented. Section 10209 reads in full as follows:

10209. Candidate change of name.

If a candidate changes his or her name within one year of any election, the new name shall not appear upon the ballot unless the change was made by:

- (a) Marriage
- (b) Decree of any court of competent jurisdiction.

A careful reading of this statute shows that it deals only with those candidates who change their names after they have circulated their nominating petitions and have been qualified for the ballot under another name. According to Mikel Haas, Deputy Director, Elections/Legislative Services, City Clerk's Office, those are not the facts here. In the present case, the candidate

is circulating the nominating petitions under his Muslim name, Atif Hakim. Neither Elections Code section 10209, nor any other state or local Elections Code sections deal with this fact pattern. Therefore, we turn to case law for guidance.

"Under California law a person may change his or her name at any time without any legal formalities." *Cabrera v. McMullen*, 204 Cal. App. 3d 1, 3 (1988), citing *In re Ritchie*, 159 Cal. App. 3d 1070 (1984). The purpose of the legal proceedings is merely to have the change recorded. *In re Ritchie*, 159 Cal. App. at 1072. If a person seeks to legalize a change of his or her name, a court may deny the request "if the circumstances indicate fraud, intentional confusion, or unnecessary intrusion into someone's privacy." *Cabrera*, 204 Cal. App. 3d at 4 n.3 (1988). In California, absent evidence of these special circumstances, a person even has the right to sue under an assumed name even though there has been no legal proceeding to formalize the name. See *Cabrera v. McMullen*, 204 Cal. App. 3d 1 (1988).

Drawing on the rule of law established by the above-cited cases, I conclude that absent evidence of the candidate's intent to defraud, intentionally confuse or unnecessarily intrude into someone else's privacy by use of his Muslim name rather than the name under which he is legally registered to vote, the candidate is entitled to designate his Muslim name for use on the ballot.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:014(x043.2)

Attachment

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